

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

BRIAN DAVIS, derivatively on behalf of
BROOKDALE SENIOR LIVING INC.,

Plaintiff,

vs.

LUCINDA M. BAIER, T. ANDREW SMITH,
STEVEN E. SWAIN, MARCUS E.
BROMLEY, FRANK M. BUMSTEAD,
JACKIE M. CLEGG, DANIEL A. DECKER,
RITA JOHNSON-MILLS, JEFFREY R.
LEEDS, MARK J. PARRELL, WILLIAM G.
PETTY, JR., GUY P. SANSONE, JAMES R.
SEWARD, DENISE W. WARREN, and LEE S.
WIELANSKY,

Defendants,

and

BROOKDALE SENIOR LIVING INC.,

Nominal Defendant.

CYNTHIA MCMAHON, Derivatively on
Behalf of BROOKDALE SENIOR LIVING
INC.,

Plaintiff,

vs.

GUY P. SANSONE, MARCUS E. BROMLEY,
FRANK M. BUMSTEAD, VICTORIA L.
FREED, RITA JOHNSON-MILLS, DENISE
W. WARREN, LEE S. WIELANSKY,
LUCINDA M. BAIER, STEVEN E. SWAIN,
JACKIE M. CLEGG, JAMES R. SEWARD,
and T. ANDREW SMITH,

Defendants,

Case No. 3:20-cv-00929

Honorable Aleta A. Trauger

Case No. 3:21-cv-00280

Honorable Aleta A. Trauger

– and –

BROOKDALE SENIOR LIVING INC., a
Delaware corporation,

Nominal Defendant.

**ORDER CONSOLIDATING CASES
AND APPOINTING CO-LEAD COUNSEL AND CO-LIAISON COUNSEL**

Plaintiffs Brian Davis (“Davis”) and Cynthia McMahon (“McMahon” and together “Plaintiffs”), derivatively on behalf of Brookdale Senior Living Inc. (“Brookdale” or the “Company”), and defendants Lucinda M. Baier, T. Andrew Smith, Steven E. Swain, Marcus E. Bromley, Frank M. Bumstead, Jackie M. Clegg, Daniel A. Decker, Rita Johnson-Mills, Jeffrey R. Leeds, Mark J. Parrell, William G. Petty, Jr., Guy P. Sansone, James R. Seward, Denise W. Warren, Lee S. Wielansky, and Victoria L. Freed (collectively, the “Individual Defendants,” and together with Brookdale the “Defendants”) (Defendants and Plaintiffs, the “Parties”) jointly submit this stipulation (“Stipulation”) to consolidate the above-captioned actions (“Actions”) and to appoint co-lead counsel and co-liaison counsel, and in support thereof state as follows:

WHEREAS, on October 29, 2020, Davis filed a putative shareholder derivative action styled *Davis v. Baier, et al.*, Case No. 3:20-cv-00929 (the “*Davis Action*”), against the Individual Defendants (except Victoria L. Freed) on behalf of the Company making claims for breaches of fiduciary duties, unjust enrichment, waste of corporate assets, abuse of control, gross mismanagement, violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and contribution under Sections 10(b) and 21D of the Exchange Act;

WHEREAS, on January 19, 2021 the parties to the *Davis Action* filed a joint motion to stay the proceedings and the Defendants’ obligation to respond to the complaint in the *Davis*

Action until after the resolution of the motion to dismiss in a related securities class action pending in this Court styled *Posey v. Brookdale Senior Living Inc., et al.*, Case No. 3:20-cv-0543, which motion the Court granted the same day (the “Stay Order”);

WHEREAS, on April 6, 2021, McMahon filed a substantially similar putative shareholder derivative action styled *McMahon v. Sansone, et al.*, Case No. 3:21-cv-00280 (the “*McMahon Action*”) against certain of the Individual Defendants on behalf of the Company making claims for breach of fiduciary duty, waste of corporate assets, unjust enrichment, and for contribution under Sections 10(b) and 21D of the Exchange Act;

WHEREAS, on May 27, 2021, Defendants filed a Notice of Related Case, advising the Court that the *Davis Action* and the *McMahon Action* are related;

WHEREAS, the Parties agree that the interests of justice, efficiency and effective case management would best be served by consolidating the *Davis Action* and the *McMahon Action*, appointing co-lead and co-liaison counsel for Plaintiffs, and coordinating Defendants’ deadlines to respond to the complaints filed in the consolidated action;

WHEREAS, in order to realize the efficiencies made possible by consolidation of the Actions, Plaintiffs agree that The Brown Law Firm, P.C. and Robbins LLP, the respective resumes of which are attached hereto as Exhibits A and B, shall be designated as Co-Lead Counsel representing Plaintiffs in the consolidated action;¹

WHEREFORE, the Parties, through their undersigned counsel, hereby agree, stipulate, and respectfully request that the Court enter an Order as follows:

1. The stay of proceedings ordered in the *Davis Action* is hereby lifted for the limited

¹ Defendants take no position on the appointment of Plaintiffs’ Co-Lead Counsel or Co-Liaison Counsel.

purpose of permitting this Stipulation to be filed and [Proposed] Order to be entered, but otherwise remains in effect.

2. Defendants hereby accept service of the complaint filed in the *McMahon* Action.

3. Pursuant to Federal Rule of Civil Procedure 42(a), the Actions are hereby consolidated for all purposes, including pretrial proceedings, trial, and appeal, and are referred to herein as the “Consolidated Action.” This Order shall apply to all shareholder derivative complaints filed on behalf of Brookdale that are subsequently filed in, removed to, reassigned to, or transferred to this Court and that arise out of the same or substantially similar transactions or events as the Consolidated Action; all such complaints shall become part of this Consolidated Action as provided herein.

4. All further pleadings and papers filed in the Consolidated Action shall bear the caption of the first-filed *Davis* matter.

5. The files of the Consolidated Action will be maintained under Lead Case No. 3:20-cv-00929. All papers shall be filed in Lead Case No. 3:20-cv-00929.

6. As requested by Plaintiffs, the following law firms are designated Co-Lead Counsel for plaintiffs in the Consolidated Action:

THE BROWN LAW FIRM, P.C.
240 Townsend Square
Oyster Bay, NY 11771
Telephone: (516) 922-5427

ROBBINS LLP
5040 Shoreham Place
San Diego, CA 92122
Telephone: (619) 525-3990

7. As requested by Plaintiffs, the following law firms are designated as Co-Liaison Counsel for plaintiffs in the Consolidated Action:

BRAMLETT LAW OFFICES
P.O. Box 150734
Nashville, Tennessee 37215
Telephone: (615) 248-2828

SPRAGENS LAW PLC
311 22nd Ave. N.
Nashville, TN 37203
Telephone: (615) 983-8900

8. Co-Lead Counsel, in consultation with Co-Liaison Counsel, shall represent plaintiffs in the prosecution of the Consolidated Action, determine and present to the Court and opposing parties the position of plaintiffs on all matters arising during pretrial negotiations, delegate and monitor the work performed by plaintiffs' attorneys to ensure that there is no duplication of effort or unnecessary expense, coordinate on behalf of the plaintiffs the initiation and conduct of discovery proceedings, have the authority to negotiate matters with Defendants' counsel, and perform such other duties as may be incidental to the proper coordination of plaintiffs' pretrial activities or authorized by further order of the Court. No motion, request for discovery, or other pre-trial or trial proceedings shall be initiated or filed by any plaintiff except through plaintiffs' Co-Lead Counsel or Co-Liaison Counsel.

9. Defendants' counsel may rely on all agreements made with Co-Lead Counsel, in consultation with Co-Liaison Counsel, or other duly authorized representative of Co-Lead Counsel, and such agreements shall be binding on all plaintiffs.

10. Plaintiffs' Co-Liaison Counsel shall perform all tasks expected of Tennessee counsel, including (without limitation) being primarily responsible for communications between plaintiffs and the Court and for plaintiffs' filings with the Court.

11. When a derivative case that properly belongs as part of the Consolidated Action is hereafter filed in this Court, or removed, reassigned or transferred here, Co-Lead Counsel shall assist the Court by calling to the attention of the Court the filing or transfer of any such action, and Co-Lead Counsel shall assure that counsel therein receive notice of this Stipulation and Order. Unless otherwise ordered, the terms of all orders, rulings, and decisions in the Consolidated Action shall apply to all later shareholder derivative actions instituted herein.

12. All papers and documents previously filed and/or served in the Actions shall be

deemed a part of the record in the Consolidated Action.

13. The Stay Order dated January 19, 2021 that effected a stay of proceedings in the *Davis* Action shall apply to the Consolidated Action.

14. This stipulation is without waiver or prejudice to any and all claims, defenses, arguments, motions, or any requests for other relief that would otherwise be available to the Parties in the Actions.

IT IS SO ORDERED.



ALETA A. TRAUGER
U.S. DISTRICT JUDGE

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